

**FILED**

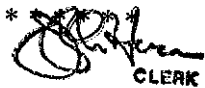
APR 25 2006

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

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O'DELL E. DAVIS, individually and on  
behalf of others similarly situated,

CIV. 05-4016

  
CLERK

Plaintiff,

vs.

OPINION AND ORDER

SOUTH DAKOTA DEPARTMENT OF  
CORRECTIONS; TIM REISCH, Secretary of  
Corrections for South Dakota; DOUGLAS  
WEBER, Chief Warden for the Department of  
Corrections; ROBERT DOOLEY, Warden of  
the Mike Durfee State Prison; DALLAS  
SCHNEIDER, Deputy Warden of the Mike  
Durfee State Prison; JOHN KUCKELBURG,  
Associate Warden of the Mike Durfee State  
Prison; MARK REED, Cultural Affairs  
Coordinator of the Mike Durfee State Prison;  
LISA McFLETCHER, Unit Manager of the  
Yankton Trustee Unit of the Mike Durfee  
State Prison; REBECCA SCHIEFFER, Unit  
Counselor of the Yankton Trustee Unit of the  
Mike Durfee State Prison; ROBERT  
NOVOTNY, Unit Case Manager of the  
Yankton Trustee Unit of the Mike Durfee  
State Prison; BRUCE FISHER, Sergeant and  
Supervisor of Guards at the Yankton Trustee  
Unit of the Mike Durfee State Prison;  
JOSEPH WIESLER, Correctional Officer  
assigned to the Yankton Trustee Unit of the  
Mike Durfee State Prison; CBM FOOD  
SERVICE, its employees and agents assigned  
to Yankton Trustee Unit of Mike Durfee  
State Prison, as food service providers for  
Dept. of Corrections inmates assigned to  
Yankton Trustee Unit of Mike Durfee State  
Prison; GARY TAYLOR, Unit Manager of  
Unit C of the South Dakota State Penitentiary;  
STEVE NEWLAND, Unit Counselor of  
Unit C of the South Dakota State Penitentiary;  
all Defendants in their individual and official  
capacities,

Defendants.

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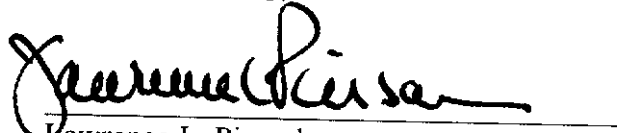
The Magistrate Judge issued a Report and Recommendation on June 30, 2005 and a Second Report and Recommendation on March 10, 2006. Plaintiff did not file any objections to either recommendation. After conducting an independent review of the record, the Court agrees with the Magistrate Judge. Accordingly, it is hereby

ORDERED that:

1. The Report and Recommendation (Doc. 13) and Second Report and Recommendation (Doc. 26) are ADOPTED.
2. Plaintiff's complaint and his amended complaint (Docs. 1 and 25) are dismissed, with prejudice, as a matter of law for failing to state a claim upon which relief can be granted against Defendant South Dakota Department of Corrections.
3. Plaintiff's complaint and amended complaint (Docs. 1 and 25) are dismissed, without prejudice, for failure to state a claim upon which relief can be granted against Defendants CBM Food Service, Reisch, Weber, Schneider, Kuckelburg, Schieffer, Fisher and Wiesler.
4. Plaintiff's complaint and amended complaint (Docs. 1 and 25) are dismissed, with prejudice, for failure to state a claim upon which relief can be granted against Defendants Dooley, Reed, McFletcher, Novotny, Taylor and Newland in their official capacities only.
5. The only Defendants that remain in this action are Defendants Dooley, Reed, McFletcher, Novotny, Taylor and Newland, in their individual capacities only. All other previously named parties shall be deleted from the caption on all future filings, and the Clerk's office is directed to terminate parties in accordance with this Order.

Dated this 25<sup>th</sup> day of April, 2006.

BY THE COURT:



Lawrence L. Piersol  
United States District Judge

ATTEST:  
JOSEPH HAAS, CLERK

By: Shelly Margulies, Deputy  
(SEAL)